

CALIFORNIA COASTAL COMMISSION

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Request Submitted: 03/28/05
Staff: SC
Staff report prepared: 04/21/05
Hearing date: 05/11/05

APPEAL OF EXECUTIVE DIRECTOR'S DETERMINATION

Project Name **Ocean View Plaza**

Applicant Cannery Row Marketplace, LLC

Action Being Appealed ..Executive Director's Determination to Reject the Submittal of a Permit Application

Project location465, 457, 470, 484, 565, & 570 Cannery Row, City of Monterey (Monterey County)

Project descriptionMixed use project consisting of 87,362 sq. ft. of retail and retail support use, including 30,000 sq. ft. of restaurant space; 8,408 sq. ft. of coastal/community use; 38 market-rate condominiums; 13 inclusionary housing units; 377 parking spaces; construction of an on-site desalination plant; rehabilitation of San Xavier Fish Reduction Plant; reconstruction of San Xavier Warehouse; replication of utility bridge; development of a community park

File documentsCoastal Act; certified Cannery Row Land Use Plan; Ocean View Plaza EIR.

Staff recommendation ...**Denial of the Appeal; Concurrence with the Executive Director's Determination**

Staff Note: This staff report is different from the typical staff reports reviewed by the Commission because it has been prepared to obtain direction from the Commission on an issue that is usually addressed at staff level: whether an application can be accepted for processing without the applicant having obtained all necessary local approvals as required by the application form. This issue is being referred to the Commission at the request of the applicant (letter of request and appeal contentions attached as Exhibit 1). As detailed below, staff has determined that the application cannot be accepted until a proposed Community Services District to operate the proposed desalination plant is formed. The formation of a Community Services District to serve the project requires City of Monterey, County of Monterey, and LAFCO approvals. In addition, the proposed desalination plant also requires Monterey County Department of Environmental Health approval. The applicant has previously been informed that an application for the project may be submitted to our office when these local approvals have been obtained, but that the materials thus far delivered to the Central Coast District office do not constitute a formal application submittal that can be accepted for processing (see Exhibits 4, 6, & 8).

Summary of Staff Recommendation: Staff recommends that the Commission deny the applicant's



California Coastal Commission
May 2005 Meeting in Palo Alto

Staff: S. Craig Approved by:

appeal and recommends that the Commission **concur** with the Executive Director's determination that the application does not meet the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5.

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I. Staff Recommendation

Staff recommends that the Commission, after public hearing, **concur** with the Executive Director's determination that the application received does not meet the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5 because the proposed project has not yet received the necessary local approvals to create a Community Services District to construct, operate, and maintain the proposed desalination plant for the project.



Motion. I move that the Commission determine that the application received for the Ocean View Plaza project meets the threshold standards for a formal application submittal as outlined in CCR Sections 13056 and 13053.5.

Staff recommends a **NO** vote on the motion. A majority of the Commissioners present is required to pass the motion.

II. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. City of Monterey Local Coastal Program Status

The proposed Ocean View Plaza project that is the subject of this appeal is located on Cannery Row in the City of Monterey. The City of Monterey has segmented its Land Use Plan (LUP) into five area components, including a Cannery Row Land Use Plan component. The Cannery Row LUP was certified in 1981. However, several other components of the Local Coastal Program (LCP) (including one land use segment and the implementation plan) are not yet certified. Thus, the City does not have a fully certified LCP. Therefore, the Cannery Row LUP at this stage of the certification process is advisory only and the standard of review for projects in the City's coastal zone is the Coastal Act.

B. Monterey Peninsula Water Supply Status

The largest water distribution system in the Monterey Peninsula is operated by the California-American Water Company, which provides water to nearly 95 percent of the approximately 112,000 residents in the Monterey Peninsula Water Management District (MPWMD). Cal-Am provides water to its users through groundwater extractions and diversions from the Carmel River via the Los Padres Dam. Both of these sources are currently being used at near or above their sustainable yield. Two threatened species, the California red-legged frog (*Rana aurora draytonii*) and the steelhead (*Oncorhynchus mykiss*), are found in the Carmel River.

In 1995, State Water Resources Control Board Order 95-10 reduced the amount of water Cal-Am could take from the Carmel River aquifer by 20 percent in the near-term and up to 75 percent in the long-term. The MPWMD requested relief through the courts, but the Monterey County Superior Court upheld the 20 percent reduction in water use specified by the order. Since that time, the jurisdictions along the Monterey Peninsula, including the City of Monterey, have been under strict conservation measures, and have focused their efforts on improving water conservation programs while working on other water supply augmentation proposals that will garner community support and help Cal-Am attain the goals established by the Order.



State Order 95-10 also mandates that Cal-Am maintain production below 11,285-acre feet/year of diversion from the Carmel River. A maximum of 4,000 acre-feet/year from the Seaside basin is allowed by MPWMD. Thus, Cal-Am production is limited to 15,285 acre-feet/year. All of this water is already allocated to current users or proposed construction that has already been approved, and no additional water source is presently available to serve Cal-Am customers within the district. For this reason, no water is available to be allocated by City of Monterey planning staff at this time. The City of Monterey currently has a waiting list for new water hookups and residential remodels.

At this time, no new supply of water is on the immediate horizon. Cal-Am and the MPWMD, however, are currently searching for additional water supplies. Possible alternative strategies include implementation of groundwater injection (e.g., storage of excess water from the Carmel River in the Seaside Coastal Basin during winter months), desalination of seawater, wastewater recycling (i.e., using reclaimed wastewater for irrigation purposes), and additional water conservation efforts that include retrofitting or replacing water-using appliances and fixtures and drought-resistant landscaping.

C. Coastal Act Requirements Regarding Water Supply

Section 30250 of the Coastal Act states, in relevant part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

This policy provides that if an urban area lacks critical infrastructure - e.g., water, sewer, or road capacity - to support further urban development, then new development must be delayed until the capacity of the limited service can be increased, through a comprehensive urban planning process, in order to support it. It does not mean that urban uses should proceed incrementally, using what are essentially rural-level services (e.g., private wells and septic systems). The proliferation of rural services within an urban area causes practical problems (e.g., wells run dry, lot sizes are too small to accommodate septic systems) and planning problems. Ultimately, incremental development without comprehensive planning may lead to serious environmental resource impacts such as groundwater overdraft, polluted groundwater, degraded riparian habitat, and so on.

The City of Monterey is highly urbanized. As stated above, Coastal Act Section 30250(a) requires that new development be located in areas with adequate public services. Cal-Am (which is regulated by the Monterey Peninsula Water Management District) is the water company authorized to provide water in the urban service area of the City of Monterey and regulate the orderly connection of water service for new development. Since water supplies are limited, the City administers a water waiting list for additional connections beyond those that can presently be served. Authorization of private wells or private desalination facilities within this public service area, whether for potable water or supplemental non-potable water for irrigation purposes, could lead to potential cumulative impacts that could



undermine Cal-Am's ability to provide adequate water supplies to existing service connections within the Monterey Peninsula Water Management District. For this reason, the Commission's 2003 approval of the Del Monte Beach LUP and Harbor LUP components of the City's LCP included policies requiring that development be served by an adequate *public* water supply, as well as a prohibition on private water supplies to serve existing and new development within the City of Monterey. Additional policies in those LUP's allow for development of public desalination facilities, provided any adverse environmental impacts are mitigated. These policies derive from one of the most fundamental principles of the Coastal Act, as well as modern urban and environmental planning: *the establishment and maintenance of stable urban/rural boundaries for the protection of sensitive resources and to provide for the rational planning of public services to support new urban development.*

As discussed above, the City of Monterey does not have a certified LCP. Therefore, the standard of review for projects within the City's coastal zone is the Coastal Act. Coastal Act Section 30250(a) requires that adequate public services be available to serve new development. The proposed Ocean View Plaza project will require approximately 25.6 acre-feet of water per year upon completion. Given the extremely limited availability of water in the City for the foreseeable future, the applicant has proposed development of a desalination plant to serve the proposed project (discussed further below). The City and the applicant understand the Coastal Act requirement that the water supply for the proposed project be provided for by a public entity. Therefore, the applicant is proposing the creation of a Community Services District, to construct, operate, and maintain the proposed desalination plant that will provide water for the Ocean View Plaza project.

D. Ocean View Plaza Application History

1. Previous Application History

The draft environmental impact report (EIR) for the proposed project was completed in April 2001. At that time, the proposed project included 101,366 square feet of commercial retail and restaurant uses, 377 parking spaces, 26 on-site market-rate residential condominiums, and 4 moderate-income residential units. The proposed project's expected water demand was estimated at 25.6 acre-feet of water per year. The draft EIR noted that the City of Monterey was at that time using most of its full allotment of water as allocated by the Monterey Peninsula Water Management District (MPWMD) (MPWMD manages the public drinking water supply in the Monterey area; the California-American Water Company [Cal-Am] is the retail water purveyor in the Monterey area). Given that there was no public water available for the project from the City's water allotment, the EIR evaluated a number of alternative water supply sources for the project and determined that a seawater desalination plant was the only feasible alternative. The EIR noted that County regulations stipulate that the desalination facility be owned and operated by a public entity. The draft EIR also noted that Cal-Am had expressed a willingness to assume such responsibility. MPWMD staff, however, expressed concerns regarding the appropriateness of Cal-Am being the owner-operator of the desalination plant. The final EIR included a letter from the applicant's representative stating that instead of Cal-Am operating and maintaining the desalination plant, that the applicant would instead form a mutual water company to oversee these duties



regarding the desalination plant, but had not yet done so. The City's approval of the project in 2002 reduced the commercial retail and restaurant uses to 91,984 square feet and increased the number of parking spaces to 381. The number of residential units remained unchanged. The City approved the desalination plant for the project and noted that the applicant proposed to form a mutual water company to construct, operate, and maintain the desalination plant.

The applicant first submitted an application for the Ocean View Plaza project to the Commission on January 16, 2003. Commission staff accepted the application and responded with a status letter on February 14, 2003 regarding additional information required in order for staff to file the application as complete, including the need for detailed desalination plant plans. That letter also stated that staff would retain the application in the Central Coast District office for six months, but noted that if the requested information was not received by August 14, 2003, the application would be returned to the applicant's representative. After receiving two letters from the applicant's representative regarding the information needed to file the application, Commission staff wrote another letter on July 24, 2003 to the applicant's representative stating that the additional information provided did not adequately address the filing requirements and that the application would be returned on September 14, 2003 if the required information for filing was not received by that date. On August 12, 2003, Commission staff (including Deputy Director Charles Lester) met with the applicant and his representative to discuss the application and the materials still needed to meet our filing requirements. In a phone discussion with the applicant several weeks following this meeting, the applicant assured Commission staff that he would submit the additional required information by October 24, 2003. The additional required information was not received by that date. On December 2, 2003 Commission staff wrote another letter to the applicant's representative stating that we would hold the application in our office until December 16, 2003, but that if the required additional information was not received by that date, that this would constitute withdrawal of the application and that the application materials would be returned at that time to the representative's office. In response to this correspondence, the applicant's representative requested an extension of this deadline, which was granted by the Central Coast District Manager, as noted in a December 17, 2003 letter from the applicant's representative. In that letter, the applicant's representative stated that the materials/information needed to file the application would be submitted by February 16, 2004 (see Exhibit 14 for all correspondence referenced in this paragraph).

In early March 2004, Commission staff learned that on September 23, 2003 (six months prior), a County Superior Court judge had ruled that the EIR for the proposed Ocean View Plaza project did not meet State standards because it failed to analyze reasonable alternatives to the proposed project. The City did not appeal this ruling. Instead, the City Council had vacated the certification of the EIR and its approval of the Ocean View Plaza project. City planning staff was, in March 2004, already developing a supplemental EIR. Thus, since September 2003, the project no longer had local approval. Neither the applicant nor the applicant's representative had informed Commission staff of this information, even though communication between the two had taken place between September 2003 and March 2004. Given all the above, Commission staff returned the unfiled application to the applicant's representative on March 3, 2004 (see Exhibit 14, pg. 8).



The supplemental EIR, which was released in mid-March 2004, evaluated seven project alternatives to the previously approved (but now vacated) project. On June 1, 2004, the City Council approved Alternative #4, which includes a redesign of the project, a reduction in the amount of retail/restaurant square footage, and an increase in the number of housing units.

2. Current Application History

The current application, which is the subject of this appeal, is for the revised project approved by the City in June 2004, which includes a reduction in the amount of retail/restaurant square footage, and an increase in the number of housing units compared to the first application submittal in January 2003. On December 9, 2004 the applicant's representative met with Commission staff and expressed the applicant's intention to submit an application for the revised Ocean View Plaza project. At that meeting, the representative informed staff that the applicant no longer planned to form a mutual water company to operate the desalination plant for the project, but instead was seeking to create, pursuant to Government Code §§ 61000 *et seq.*, a Community Services District (CSD) to construct, operate, and maintain the proposed desalination plant (the purpose of a CSD is to provide a community with various needed public services, such as an adequate water supply, trash collection and disposal, fire and police protection, etc.). The creation of a CSD to construct, operate, and maintain the proposed desalination plant would require additional approvals (that have not yet been obtained) from the City of Monterey, the County of Monterey, and, pursuant to Government Code section 61107, the Local Area Formation Commission (LAFCO) of Monterey County (LAFCOs were created in each county in California by the Legislature in 1963; this initial legislation was replaced by the Cortese-Knox Local Government Reorganization Act of 1985 (Government Code §§ 56000 *et seq.*)); LAFCOs were created to discourage urban sprawl and encourage the orderly formation and development of local government agencies.) Specifically, LAFCO of Monterey County is responsible for coordinating logical and timely changes in local governmental boundaries, including annexations and detachments of territory, incorporations of cities, formations of special districts, and consolidations, mergers, and dissolutions of districts, as well as reviewing ways to reorganize, simplify, and streamline governmental structure.

At the December 9, 2004 meeting Commission staff informed the applicant's representative that staff would not accept an application submittal for the project until all local approvals have been obtained, specifically the approvals still needed for the proposed Community Services District to provide water for the proposed project. Staff's main concern was that there is no guarantee that the City, the County, and LAFCO would approve the creation of a Community Services District to serve not a community but a single project. Also, until a Community Services District is established, there is no entity to take responsibility for the future construction and operation of the facility and its discharge. Staff followed up that conversation with a letter the following day (Exhibit 4). Given the fundamental lack of a public entity to take responsibility for construction, operation, and maintenance of the proposed desalination plant, the applicant's representative was informed that staff would not accept an application until this issue was resolved.

3. Appeal Contentions



See Exhibit 1 for the letter dated March 25, 2005 that contains the applicant's contentions.

Contentions:

Page 1 of Exhibit 1 states:

*"...we are hereby filing an appeal of the Executive Director's refusal to process CRM's application for a coastal development permit **filed** over three months ago for the Ocean View Plaza project." [emphasis added]*

Page 2 of Exhibit 1 states:

*After the City's approval, CRM **proceeded to file** an application with the Coastal Commission for a coastal development permit for the project. [emphasis added]*

Analysis: As stated in staff's letter to the applicant's representative dated December 10, 2004 (Exhibit 4), staff never accepted the application for processing due to the fundamental lack of the required local approvals regarding creation of the proposed Community Services District to construct, operate, and maintain the proposed desalination plant. In that letter, the applicant's representative was informed that an application could be submitted when the appropriate local approvals were obtained. Additional letters to the applicant's representative dated December 24, 2004 and February 7, 2005 further elaborate the reasons that the application could not be accepted (Exhibits 6 & 8). Specifically, these letters state that in order for an application to be accepted for filing or completeness review under CCR Section 13056, the application must first *meet the basic requirements of a formal application submittal*. In this case, the application presented fails this initial test because it lacks evidence of necessary governmental approvals for the creation of a Community Services District needed to construct, operate, and maintain the proposed desalination plant that will provide the water supply that is a basic and fundamental component of the proposed project. Additionally, CCR Section 13056(a) requires an application to be submitted on the form issued pursuant to section 13053.5. The Commission's application form (Exhibit 2) states on the first page that, if relevant, as is the case here, "other public agency approvals" are required for an application to be *accepted* for processing. Given that the required "other agency approvals" regarding the fundamental components of construction, operation and maintenance of the proposed desalination plant have not yet been given to the applicant, it is premature for the applicant to submit an application for the proposed project.

In conclusion, the contentions above stating that the application has been filed are untrue given that the application submittal has never been accepted because of the lack of fundamental local approvals for the water supply component of the project.



Contention:**Page 2 of Exhibit 1 states:**

The Executive Director through its Commission staff has informed us that they will not process CRM's application until after CRM first obtains final approvals from all responsible agencies even though these responsible agencies have insisted that this should not be required.

Analysis: The contention above references two letters, one from the California Regional Water Quality Control Board (RWQCB) and one from the City of Monterey (see Exhibits 9 & 10). No correspondence from the County of Monterey or LAFCO is provided. Thus, there is no evidence that the County or LAFCO have "insisted that [final approvals] should not be required." Additionally, contrary to the above contention, the letter from RWQCB states "Since the project has not yet received City, County, LAFCO, and Coastal Commission approval, we cannot be certain what changes these entities will require and how they may affect the discharge. More fundamentally, until the Community Services District is established, there is no entity to take responsibility for the operation of the facility or its discharge." Nowhere in this letter does RWQCB staff state that final approvals from all responsible agencies should not be required.

Contention:**Page 2 of Exhibit 1 states:**

The Executive Director's refusal to accept and process CRM's application is contrary to Section 13052 of the Commission's regulations.

The applicant contends that it has secured the necessary final approvals for the Ocean View Plaza project as required under Coastal Commission Regulations (CCR) Section 13052 (see Exhibit 1 pp. 2-3 for the complete appeal contention and CCR Section 13052 language). Section 13052 states that an application shall not be accepted for filing by the Executive Director unless other state and local governmental agencies have granted at a minimum their preliminary approvals for the development. This section also states, in part:

*An applicant shall have been deemed to have complied with the requirements of this Section when the proposed development has received approvals of any or all of the following aspects of the proposal, as **applicable**: [emphasis added]*

Subsections 13052(a-k) provide a list of required approvals that the applicant states has been met. However, as noted in letters dated December 24, 2004 and February 7, 2005 (Exhibits 6 & 8), the Executive Director disagrees with the applicant's interpretation of Section 13052. Specifically, the Executive Director interprets this section to mean that providing evidence of the granting of the approvals listed in subsections (a) - (k) will satisfy the requirements of section 13052 to the extent and *only to the extent* that all of the governmental approvals that a proposed development project will require are in fact identified in that listing, i.e., if any governmental approvals that a project will require are *not listed* in subsections (a) - (k), submittal of evidence of the granting of only those approvals



listed in subsections (a) – (k) will *not* satisfy the requirements of 13052. Thus, because the required local approvals for the creation of a Community Services District to construct, operate, and maintain the proposed desalination plant have not been given, the applicant has not complied with the requirements of CCR Section 13052.

Contention:

Page 4 of Exhibit 1 states:

Sections 13056 and 13053.5 of the Commission’s regulations also do not provide any authority for the Commission staff to delay processing CRM’s application.

See Exhibit 1 pp. 4-5 for the complete language of the applicant’s contention. See Exhibit 13 for CCR Sections 13056 and 13053.5. The applicant contends that Section 13056(a) does not contain any language either requiring an applicant to obtain, or authorizing the Executive Director to require, final approvals from responsible agencies. In order for an application to be accepted for filing or completeness review under Section 13056, the application must first meet the basic requirements for a formal application submittal. The current submittal for the Ocean View Plaza project fails this initial determination because it lacks evidence of necessary governmental approvals for a critical aspect of the project: specifically, the formation of a Community Services District to construct, operate, and maintain the proposed desalination plant. The first page of the Commission’s application form (Exhibit 2) states that, if relevant, as is the case here, “other public agency approvals” are required for an application to be accepted for processing. Commission staff has never asserted that section 13056(a) of the Commission’s regulations *by itself* requires an applicant to obtain final approvals, but rather has asserted that it is the applicable provision in the Commission’s application form (as referenced in Section 13056(a)) that imposes this requirement.

CCR Section 13053.5 provides for application form and information requirements (Exhibit 13). The applicant contends that the Coastal Commission application form does not identify any other additional requirements for “categories of development,” as stated in CCR Section 13053.5(e). In this case, the specific Ocean View Plaza project is representative of a specific category of development, i.e., a project that is proposing to rely on a proposed (but not yet created) Community Services District to construct, operate, and maintain a proposed desalination plant. In other words, Section 13053.5(e) allows the Executive Director to elaborate upon and clarify how the requirements of the current application form apply to a specific project proposal, such as the Ocean View Plaza project.

The applicant also references Commission staff’s March 2004 report entitled “Seawater Desalination and the California Coastal Act,” which states the report is meant to be “informational only” and “does not create new regulations or guidelines for reviewing proposed desalination facilities” (Exhibit 12). The applicant contends that additional requirements based on the proposed desalination facility are completely unwarranted. As discussed above, CCR Section 13053.5(e) provides for the Executive Director to clarify how the requirements of the application form apply to specific categories of development, such as the proposed development that relies upon a desalination facility that in turn requires the creation of a Community Services District to construct, operate, and maintain the facility.



Thus, the references to the Commission's March 2004 desalination report are not relevant.

Contention:

Page 5 of Exhibit 1 states:

The Commission staff's refusal to process CRM's application is inconsistent with the Commission's longstanding practice.

See Exhibit 1 pp. 5-6 for the complete language of the applicant's contention. The applicant contends that it has been the Commission's longstanding practice to process coastal development applications without requiring final approvals from responsible agencies before processing an application. The applicant references the Beardsley project (CDP 3-04-009), which was approved by the Commission in 2004 (see Exhibit 11 for findings and conditions regarding this approval). The Beardsley project includes 5 residential condominium units, 674 square feet of retail commercial space, and 5 basement parking spaces on a 4,750 square foot lot on Cannery Row in the City of Monterey. When constructed, the Beardsley project will require 0.135 acre feet of water per year for the 674 square foot ground-floor commercial use and 0.840 acre feet to support the 5 residential condominium units, for a total of 0.975 acre-feet of water per year. The water will be supplied by Cal-Am, which is regulated by the Monterey Peninsula Water Management District. As discussed above, there is no water available for new residential or commercial development in the City of Monterey. The Beardsley staff report notes that the applicant has been placed on the City's Water Waiting List. The City of Monterey evaluates the Water Waiting List periodically and allocates water as it becomes available due to new sources or when previously approved projects do not go forward and the water from those projects is re-allocated. The Beardsley staff report notes that the City has had a water waiting list for approximately the past five years. Over that time, the waiting list has been cleared twice (pers. comm. with City staff). The Beardsley project was conditioned to provide evidence of water availability prior to issuance of the coastal development permit. The findings regarding water in the Beardsley staff report note that in the event that the permit is not issued within the next two years, and an extension is requested, the absence of a water assignment may constitute a changed circumstance in light of the water constraints in the Monterey Peninsula area.

There are major differences between the Beardsley project and the proposed Ocean View Plaza project. The scale of the Beardsley development (5 residential condominium units and 674 square feet of retail space requiring 0.975 acre-feet of water/year) is relatively small compared to the proposed Ocean View Plaza project (87,362 sq. ft. of restaurant/retail and retail support use and 51 residential units requiring approximately 25.6 acre-feet of water/year). In addition, the Beardsley project has been assigned to the City's water waiting list. When the project clears the water waiting list, Cal-Am (which is regulated by the Monterey Peninsula Water Management District) will provide water to the project. The large-scale Ocean View Plaza project, however, will rely on a separate water supply (desalination plant) that will need to be constructed, operated, and maintained by an entity (Community Services District) that does not yet exist and whose creation depends upon the future actions of LAFCO and other local governmental agencies. Thus the applicant's comparison of the Beardsley project to the proposed



Ocean View Plaza is not relevant.

The applicant again contends that other agencies, including the City of Monterey, the County of Monterey, and the Regional Water Quality Control Board (RWQCB) have expressed that the Coastal Commission has sufficient information necessary to proceed with this application. Other than the letter from the City (Exhibit 10), the applicant's representative provides no evidence for this contention regarding the County or LAFCO. Additionally, as discussed above and contrary to the above contention, the letter from RWQCB (Exhibit 9) states "Since the project has not yet received City, County, LAFCO, and Coastal Commission approval, we cannot be certain what changes these entities will require and how they may affect the discharge. More fundamentally, until the Community Services District is established, there is no entity to take responsibility for the operation of the facility or its discharge." Nowhere in this letter does RWQCB staff state that the Coastal Commission has sufficient information necessary to proceed with this application.

The applicant also asserts that CCR Section 13053(e) (which in turn references Government Code/PSA Section 65941(c)) imposes a mandatory duty to waive otherwise required local approvals for the project described in the subject application (see Exhibit 13 for these references). Section 65941(c) requires that a responsible agency "commence processing a permit application for a development project prior to final action on the project by a lead agency..." However, the requirements imposed by staff pertain not to approval(s) by the lead agency, the City of Monterey, but to approvals by other responsible agencies. Also, the evident purpose of Section 65941(c) is to prevent a responsible agency that has determined an application for a development project to be *complete* under Government Code/PSA Section 65943 from refusing to process that application on the basis of Gov't Code/PSA Section 65952(a)(1), which provides that the period within which a responsible agency must render a decision on an application does not begin to run until "the lead agency has approved the project." As discussed above, the application submittal has never been accepted in by Commission staff because of the lack of fundamental local approvals for the project. Therefore, Section 65941(c) has no applicability to the current situation in which the Commission, as a responsible agency, has made no determination of application completeness.

